

For Pine Canyon Meeting @ 2:30p



When recorded, return to:

A2000-0905.2

City Clerk  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

## AMENDMENT TO DEVELOPMENT AGREEMENT

This Amendment to the Development Agreement between the City of Flagstaff ("City") and Vanderbilt Farms, L.L.C. dated September 5, 2000, is made and entered into as of the ~~30th~~ day of January, 2007 by the City and Lone Tree Investments, LLC ("Developer"), successor to Vanderbilt Farms, L.L.C., collectively referenced herein as the "Parties," as follows:

### RECITALS

A. On June 5, 2000, the City adopted Rezoning Ordinance 2000-11 (the "Ordinance"), rezoning certain real property legally described therein then known as "Fairway Peaks" and now known as "Pine Canyon" (hereinafter referred to as "Pine Canyon"), subject to the conditions set forth in the Ordinance. General Condition 8 ("GC 8") of the Ordinance provided that "all private roads within the Development remain open to the public and never be gated." General Condition 9 ("GC 9") of the Ordinance required Developer to enter into a development agreement with the City providing for affordable housing units as part of the development of Pine Canyon. The Ordinance was recorded with the Coconino County Recorder's Office on July 17, 2000 as instrument 3056859.

B. On or about September 5, 2000, the Parties entered into a Development Agreement, recorded with the Coconino County Recorder's Office on September 8, 2000, as instrument 3063582 ("Original Agreement"), concerning development of Pine Canyon, legally described as in the Original Agreement and incorporated herein by reference ("Property").

C. A.R.S. § 9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City concerning, among other things, permitted uses on the Property, density of the development, conditions and terms for public infrastructure, and any other matter relating to development of the property. Additionally, A.R.S. § 9-500.11 authorizes the City to appropriate and spend public monies for and in conjunction with economic development activities. The Parties acknowledge and agree that this Amendment is a development agreement pursuant to A.R.S. § 9-500.05.

D. Certain disputes have arisen between the Parties with respect to the Ordinance and the Original Agreement, including, but not limited to, disputes as to the validity, enforceability, and meaning of GC 8, the rights and obligations of the parties under GC 9, and the phasing and platting of Pine Canyon. These disputes resulted in the filing of a lawsuit by the

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City and a counterclaim by Developer, captioned *City of Flagstaff v. Lone Tree Investments, LLC*, Coconino County Superior Court Cause No. CV-20050530 (the "Lawsuit").

E. To resolve these disputes and the Lawsuit, the Parties hereto now desire to make certain adjustments, amendments and clarifications to the Original Agreement for their mutual benefit.

### AGREEMENT

NOW, THEREFORE, in consideration for the Parties entering into this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties acknowledge and expressly agree as follows:

1. Developer acknowledges and reconfirms the validity and binding effect of GC 8, which conditioned the rezoning of Pine Canyon upon the requirement that all private roads within the Pine Canyon development shall remain open to the public and shall never be gated.
2. The City acknowledges and agrees that GC 8 and the Ordinance do not prevent Developer from constructing guardhouses at entrances to Pine Canyon, staffing same with security personnel, and enforcing reasonable security measures concerning access.
3. Developer may, at its option, abandon the third entrance to Pine Canyon shown on conceptual plans to be located off John Wesley Powell Boulevard near the northeast corner of Pine Canyon, providing that the main entrance and the clubhouse entrance remain open and available for ingress and egress to the public. Developer may construct and maintain guardhouses and security guards at the main entrance and the clubhouse entrance, under the terms set forth in Paragraph 2 of this Amendment.
4. Within ten (10) business days of the City's written request to Developer, Developer shall convey to the City, by Special Warranty Deeds, and free and clear of all encumbrances, mortgages, liens, or other interests, fee title to up to five (5) strips of land across Tract 13 of The Estates at Pine Canyon – Unit One for roadway purposes. Each such strip shall be no more than 100 feet in width and shall cross all of Tract 13 from south to north so as to provide public access from John Wesley Powell Boulevard to the parcel or parcels of land adjoining Tract 13 to the north. Each written request from the City to Developer pursuant to this Paragraph 4 shall include a legal description of the strip of land to be dedicated to the City which legal description shall be obtained at the sole cost of the City. Recordation expenses of the Special Warranty Deed or Deeds given by Developer pursuant to this Paragraph 4 shall be borne by Developer. Upon conveyance of each strip, the provisions of the Original Agreement and this Amendment shall be released as to each such strip without further action by the Parties.
5. Contemporaneous with the recordation of this Amendment, Developer shall convey to the City, at no cost to the City, by Special Warranty Deed (the "Deed"), and free and clear of all encumbrances, mortgages, liens, or other interests, insured fee title to the following parcel:

Tract 2, THE ESTATES AT PINE CANYON UNIT ONE, a Resubdivision of Tract "X" of THE ESTATES AT PINE CANYON UNIT ONE, according to the

plat in Case 8, Map 79 and in Case 8, Map 92, records of Coconino County, Arizona

Upon the transfer of title to said tract, Developer will be deemed to have fully satisfied its obligations under GC 9 of the Ordinance and Section 11 of the Original Agreement relating to affordable housing.

6. Upon the recordation of this Amendment and of the Deed, the Original Agreement will be deemed released as to the following two parcels of real property:

Tract 2, THE ESTATES AT PINE CANYON UNIT ONE, a Resubdivision of Tract "X" of THE ESTATES AT PINE CANYON UNIT ONE, according to the plat in Case 8, Map 79 and in Case 8, Map 92, records of Coconino County, Arizona

Tract P, THE ESTATES AT PINE CANYON UNIT ONE, a Resubdivision of Tract "X" of THE ESTATES AT PINE CANYON UNIT ONE, according to the plat in Case 8, Map 79 and in Case 8, Map 92, records of Coconino County, Arizona.

7. The City acknowledges and agrees that, subject to the Flagstaff Land Development Code and other applicable laws or regulations, and notwithstanding any provision of the Original Agreement to the contrary, Developer may proceed concurrently through the remaining phases of the development of Pine Canyon, without necessarily completing one phase before beginning the next phase.

8. This Amendment shall be recorded by the City in the Official Records of Coconino County, Arizona within ten (10) calendar days after execution. This Amendment may be amended or cancelled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the Parties.

9. Except as provided herein, all provisions of the Original Agreement shall remain in full force and effect.

10. In executing this Amendment, each party hereto acknowledges that it has consulted with and had the advice of counsel of its own choosing in negotiations for and preparation of this Amendment and was fully advised by counsel with respect to all rights which are affected by this Amendment.

11. For purposes of construction and interpretation, this Amendment shall be deemed to have been jointly drafted by counsel for both Parties, and ambiguities, if any, shall not be construed for or against any party.

12. This is the entire Amendment among the Parties with respect to the subject matter hereof. It includes all of the terms, promises, representations and understandings made by the Parties, and it supersedes any earlier written or oral understandings or Amendments between the Parties concerning this Amendment. No party hereto nor its respective attorneys or advisors or agents have made any promise, representation or warranty, whether expressed, implied or

statutory, not contained herein, concerning the subject matter of this Amendment in order to induce the parties hereto to execute this Amendment, and each signatory acknowledges that such party has not executed this instrument in reliance on any promise, representation or warranty not contained herein.

13. Each party to this Amendment certifies that it has read all of this Amendment and fully understands all of the same.

14. Each party to this Amendment will cooperate reasonably and in good faith and diligently perform any further acts, deeds and things and execute and deliver any documents that may from time to time be reasonably necessary or otherwise reasonably required to consummate, evidence, confirm and/or carry out the intent and provisions of this Amendment, all without undue delay or expense and without further consideration.

15. By executing this Amendment, the City warrants that this Amendment has been duly and lawfully approved at a properly noticed meeting of the City Council of the City of Flagstaff.

16. Each of the Parties hereto hereby acknowledges that the rights granted the other party hereunder are unique and that, accordingly, the other party's obligations hereunder should be specifically enforceable, and that it would be equitable for a court of competent jurisdiction to order the specific performance of the other party's obligations under this Amendment.

17. This Amendment is subject to the cancellation provisions of A.R.S. § 38-511, but the Parties hereto do not believe any such reasons for cancellation of this Amendment pursuant to said statute now exist.

18. This Amendment shall be effective upon the occurrence of both the following events: (i) execution by the Parties hereto; and (ii) recordation in the Official Records of Coconino County, Arizona.

19. The Recitals set forth above and exhibits attached hereto are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, Developer and the City have executed this Agreement.

LONE TREE INVESTMENTS, LLC

By: Central and Osborn Properties, Inc., an Arizona corporation, its manager

By:

  
Patricia E. Nolan, President

CITY OF FLAGSTAFF

By

Scott Overton, Vice-Mayor

Attest:

Margie Brown  
City Clerk

Approved as to form:

[Signature]  
City Attorney

STATE OF ARIZONA )

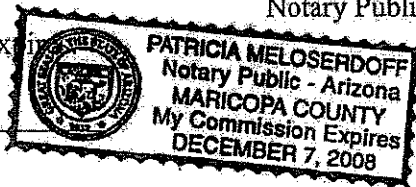
) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this 24 day of January, 2007, by Patricia E. Nolan, President of Central and Osborn Properties, Inc., Manager of Lone Tree Investments, LLC.

Patricia Meloseroff  
Notary Public

My Commission Expires:



STATE OF ARIZONA )

) ss.

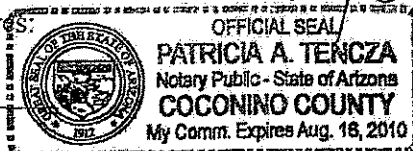
County of Coconino )

The foregoing instrument was acknowledged before me this 30th day of January, 2007, by Scott Overton for and on behalf of the City of Flagstaff.

Patricia A. Tencza  
Notary Public

My Commission Expires:

8/16/2010





ORDINANCE NO. 2000-11

AN ORDINANCE REZONING APPROXIMATELY 660.03 ACRES OF LAND AT THE 3000 BLOCK OF SOUTH LONE TREE ROAD FROM: RR, RURAL RESIDENTIAL DISTRICT TO R1, RESIDENTIAL DISTRICT (615 ACRES); RR, RURAL RESIDENTIAL DISTRICT TO HR, HIGH DENSITY RESIDENTIAL DISTRICT (18.3 ACRES); AND RR, RURAL RESIDENTIAL DISTRICT TO MH, MANUFACTURED HOUSING DISTRICT (26.64 ACRES) CONDITIONAL.

WHEREAS, the Council finds that the applicant has complied with Section 10-10-004-0007 of the Land Development Code by virtue of having paid the required fee and having supplied the required documentation; and

WHEREAS, the Council has read and considered the staff reports prepared by the Planning Division and has reviewed the Conceptual Site Plan and considered the narrative prepared by the applicant, and the Council finds that the Conceptual Site Plan and related stipulations further the application by providing for affordable housing; and

WHEREAS, the Planning and Zoning Commission has formally considered the present rezoning application following proper notice and hearing with the result that the Planning and Zoning Commission has recommended approval of the requested zoning application, subject to the applicant's compliance with certain general conditions set forth hereinbelow; and

WHEREAS, the staff has recommended approval of the rezoning application, subject to the general conditions proposed by the Planning and Zoning Commission, as modified by staff, and the Council has considered each of the conditions and has found them to be appropriate for the site and necessary for the proposed development; and

WHEREAS, the Council finds that the proposed rezoning and approved Conceptual Site Plan with conditions will not be detrimental to the uses of adjoining parcels or to other uses within the vicinity;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the subject property, consisting of several parcels, be rezoned from: RR, Rural Residential District to R-1, Residential District Conditional (.615 Acres), as depicted in Exhibits A and A-1 attached to and made a part hereof; RR, Rural Residential District to HR, High Density Residential District Conditional (18.3 Acres), as depicted in Exhibits B and B-1 attached to and made a part hereof; and RR, Rural Residential District to MH, Manufactured Housing District Conditional (26.64 Acres), as depicted in Exhibits C and C-1 attached to and made a part hereof, in accordance with the Conceptual Site Plan presented with the rezoning request.

SECTION 2. That the Fairway Peaks Development Agreement ("Development Agreement") prepared by the applicant and the City be reviewed and approved by the City Council prior to the City Council's second reading and adoption of this Ordinance.

SECTION 3. That the rezoning be conditional upon compliance with the provisions of the Land Development Code to construct the improvements shown upon the approved Conceptual Site Plan and be further conditioned upon the applicant's satisfaction of the following nine (9) conditions proposed by the Planning and Zoning Commission, as modified and recommended by staff:

GENERAL CONDITIONS:

1. That the subject property be developed according to the Conceptual Site Plan for Fairway Peaks as presented with the rezoning request.
2. That all other requirements of the Land Development Code and other City codes, ordinances and regulations, including the conditions of the Development Review Board of January 6, 2000, be met by the proposed Fairway Peaks Development ("Development").
3. That the applicant have a solid fence and landscaped buffer constructed to screen the Flagstaff Urban Trail from the maintenance facility.



4. That the applicant grant permanent public pedestrian easements on trails within the Development.
5. That all of the terms, conditions, and restrictions set forth in the Development Agreement be fully satisfied.
6. That if the City's Planning Division should determine that a pedestrian underpass (14' x 8' minimum) at the intersection of Lone Tree Road and the John Wesley Powell Boulevard connecting to the Flagstaff Urban Trail System be the best pedestrian alternative, then the applicant shall construct the same in accordance with an approved engineering plan.
7. That the applicant's failure to obtain site plan, final plat or grading permit approval for any of the three (3) subject parcels within two (2) years of the effective date of the rezoning ordinance, or within an extension of said two (2) year period granted by the Planning and Zoning Commission, shall cause the City to conduct a public hearing for the purpose of reverting the R1, Residential zoning; the HR, High Density Residential zoning; and the MH, Manufactured Housing zoning to their former respective classifications of RR, Rural Residential District in accordance with Arizona Revised Statute § 9-462.01.
8. That all private roads within the Development remain open to the public and never be gated.
9. That the Development Agreement require the applicant to provide affordable housing units rather than permit the applicant to make payments in lieu of constructing affordable housing units.

PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this 6th day of June, 2000.

  
MAYOR

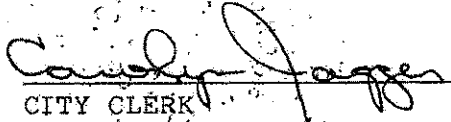




ORDINANCE NO. 2000-11

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ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY



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